Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram (No 2)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-23-04 OF 1997
KAMALANATHAN RATNAM JC
17 NOVEMBER 1997

Civil Procedure *— Particulars — Further and better particulars — Application to strike out defendant's further and better particulars for being filed out of time — Whether application for leave for extension of time ought to be allowed*

Civil Procedure *— Time — Extension of time — Application to extend time to file further and better particulars — Whether defendant's further and better particulars ought be struck out for being filed out of time*

The plaintiff filed a suit for defamation for RM30m for libel and an injunction to restrain the defendant from further publishing the said or any similar libel and slander. The defendant in turn counterclaimed for RM100m for libel and similar injunctive relief. The parties were both advocates and solicitors and related through marriage, the plaintiff having married the defendant's sister. On 7 May 1997, the learned judge granted an interim injunction against the defendant pending trial of the action. On 7 July 1997, on the application of the defendant, a similar interim injunction was granted as against the plaintiff (see [1998] 5 MLJ 523). The parties then took out three other applications before the learned judge. The first (encl 69) was an application by the plaintiff to strike out the defendant's further and better particulars for being filed out of time. The deputy registrar had on 18 June 1997 ordered the defendant to deliver various particulars within 30 days of the said order. No application for stay of proceedings was filed. On 14 August 1997, the learned judge only partially allowed an appeal by the defendant and the defendant filed the further and better particulars ordered by the deputy registrar on 12 September 1997. The plaintiff contended that the said particulars was filed outside the 30 days from the date of the order of the deputy registrar and ought to be struck off. The second application (encl 73) was an application by the defendant for leave to extend time to file the further and better particulars from the date of the order of the deputy registrar. The third application (encl 79) was by the plaintiff to strike out the affidavit filed by the defendant in support of encl 73.

Held, dismissing the first and third applications:

(1) Enclosure 69 to strike off the defendant's further and better particulars ought to be dismissed. Whilst the order of the deputy registrar ought to have been complied with or an application for stay sought, any compliance of the order of the deputy registrar whilst an appeal was pending would render the appeal nugatory. If indeed the plaintiff felt strongly about the issue, the plaintiff ought to apply to strike out the appeals as soon as the 30-day

period was over. By appearing and arguing the matter on 14 August 1997, the plaintiff had waived any right to file encl 69 and was estopped by conduct (see p 533F–H).

(2) Because of the close relationship between the respective protagonists, every opportunity must be given to either party to ventilate their grievances fully for where else could either party go for justice than to the footsteps of the court (see pp 533I and 534A).

[Bahasa Malaysia summary

Plaintif memfailkan satu guaman untuk fitnah sebanyak RM30 juta untuk libel dan satu injunksi bagi menahan defendan daripada terus menerbit libel dan slander tersebut atau yang serupa dengannya. Defendan pula membuat tuntutan balas untuk RM100 juta untuk libel dan relief injunksi yang serupa. Pihak-pihak kedua-duanya peguambela dan peguamcara dan bersaudara melalui perkahwinan, di mana plaintif telah mengahwini adik defendan. Pada 7 Mei 1997, hakim yang arif membenarkan injunksi interim terhadap defendan sementara menunggu perbicaraan tindakan. Pada 7 Julai 1997, atas permohonan defendan, suatu injunksi interim yang serupa telah diberikan terhadap plaintif (lihat [1998] 5 MLJ 523). Pihak-pihak kemudiannya mengambil tiga permohonan lain di hadapan hakim yang arif. Yang pertama (lampiran 69) adalah satu permohonan oleh plaintif untuk membatalkan butir lanjut dan jelas defendan kerana difailkan di luar masa. Pada 18 Jun 1997 timbalan pendaftar telah memerintah defendan supaya menyampaikan pelbagai butir dalam tempoh 30 hari daripada perintah tersebut. Tiada permohonan untuk penggantungan prosiding telah difailkan. Pada 14 Ogos 1997, hakim yang arif hanya membenarkan sebahagian rayuan oleh defendan dan defendan memfailkan butir lanjut dan jelas yang diperintahkan oleh timbalan pendaftar pada 12 September 1997. Plaintif menghujahkan bahawa butir tersebut difailkan di luar 30 hari dari tarikh perintah timbalan pendaftar dan sepatutnya dibatalkan. Permohonan kedua (lampiran 73) adalah satu permohonan oleh defendan untuk kebenaran melanjutkan masa bagi memfailkan butir lanjut dan jelas dari tarikh perintah timbalan pendaftar. Permohonan ketiga (lampiran 79) adalah oleh plaintif untuk membatalkan afidavit yang difailkan oleh defendan bagi menyokong lampiran 73.

Diputuskan, menolak permohonan pertama dan ketiga:

(1) Lampiran 69 untuk membatalkan butir lanjut dan jelas defendan sepatutnya ditolak. Walaupun perintah timbalan pendaftar sepatutnya dipatuhi atau permohonan untuk penggantungan diminta, sebarang kepatuhan perintah timbalan pendaftar sementara menunggu penyelesaian rayuan akan menyebabkan rayuan menjadi tidak berguna. Biarpun plaintif mempunyai pendirian yang teguh tentang isu ini, plaintif sepatutnya memohon membatalkan rayuan-rayuan sebaik sahaja tamatnya tempoh 30

hari. Dengan menghadiri mahkamah dan menghujah hal itu pada 14 Ogos 1997, plaintif telah mengenepikan apa-apa hak untuk memfailkan lampiran 69 dan diestop oleh kelakuan (lihat ms 533F–H).

(2) Disebabkan perhubungan rapat di antara protagonis masing-masing, setiap peluang mesti diberikan kepada mana-mana pihak untuk mengutarakan kilanan mereka sepenuhnya kerana tiada tempat lagi pihak-pihak boleh mencapai keadilan kecuali di mahkamah (lihat ms 533I dan 534A).]

Notes

For cases on further and better particulars, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2357–2358.

For cases on extension of time, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3570–3577.

M Thiruchelvasegaram (*Syarikat M Segaram*) for the plaintiff.

Mahadevi Nadchatiram (*Shanti T* with her) (*Mahadevi Nadchatiram & Partners*) for the defendant.

Kamalanathan Ratnam JC: This is a suit for defamation filed by the plaintiff, an advocate and solicitor against his sister-in-law, also an advocate and solicitor. The plaintiff's claim is for damages in the sum of RM30m for libel on the footing of aggravated or exemplary damages, an injunction to restrain the defendant from further publishing the said or any similar libel and slander and for costs.

The defendant filed a defence and counterclaimed for damages in the sum of RM100m for libel on the footing of aggravated or exemplary damages, and further similar orders as prayed for by the plaintiff against her.

I had on 7 May 1997 upon the application of the plaintiff, granted an interim injunction against the defendant restraining her or her agents or servants from publishing such libel and slander as set out in the amended statement of claim pending the trial of this suit. I also granted the plaintiff a Mareva injunction and restrained the defendant from disposing off of certain of her assets with costs. There was no appeal against this order.

On 7 July 1997, the defendant took out an application to injunct the plaintiff from publishing such libel and slander as set out in the counterclaim pending the trial of this suit. She also applied for a Mareva injunction to restrain the plaintiff from disposing off his assets up to a value of RM20m and for an Anton Piller order in aid of the Mareva injunction. Having heard arguments I granted the restraining order and injuncted the plaintiff from any further publications of any of the said libel and slander as referred to in the counterclaim until trial of this suit. However I dismissed the prayers for both the Mareva injunction and the Anton Piller order. The plaintiff has appealed against this decision. My written judgment on this was delivered on 1 October 1997 (see [1998] 5 MLJ 523).

The parties, in the meantime, took out three other applications, namely encls 69, 73 and 76.

A

Enclosures 69, 73 and 76

In response to the plaintiff's application (encl 39) for further and better particulars of the defence, the Deputy Registrar ('the DR') granted an order on 18 June 1997 for the defendant to deliver various particulars
B within 30 days of the said order. The defendant appealed against the said order which came up before me on 14 August 1997. I partially allowed the appeal. I allowed the appeal regarding prayers (1) and (2) of encl 39, and disallowed the appeal against prayer (3). In respect of prayer (4), I ordered each party to pay its own cost.

C In his affidavit (encl 68), the plaintiff has affirmed that I had re-affirmed the DR's order. This is not correct because I have partially allowed the defendant's appeal. Further, the plaintiff has also averred in the same affidavit that I had on the same day, that is on 14 August 1997, dismissed the defendant's application for extension of time to file the further and better particulars which ought to have been filed within 30 days
D of the order made by the DR on 18 June 1997. It was also pointed out that since there was no application for a stay of the DR's order, the further and better particulars filed on 12 September 1997 by the defendant in response to my order dated 14 August 1997 ought to be struck out as being filed outside the time allowed. This was encl 69. Enclosure 73 was an application
E by the defendant for: (i) leave to file an application out of time; and (ii) for leave to extend time for the filing of the further and better particulars up to the date of filing of the further and better particulars from the date of the order of the DR. Enclosure 76 was the plaintiff's application to strike out the affidavit filed by the defendant in support of encl 73. By way of his written submission, the plaintiff canvassed arguments in respect of all
F three applications.

To my mind, the application (encl 69) by the plaintiff to strike off the defendant's further and better particulars ought to be dismissed. My recorded notes do not show that an application was made by the defendant to extend time and that I dismissed the same. Whilst I agree that the order
G of the DR ought to have been complied with or an application for stay filed by the defendant, any compliance of the order of the DR whilst the matter is under appeal, would have rendered nugatory the subsequent appeal. As my decision reflects, I have indeed partially allowed the defendant's appeal against the DR's order. If the plaintiff has felt strongly on this issue, then it is my judgment that as soon as the 30-day period was over, as from
H 18 June 1997, the plaintiff ought to have applied to strike out the appeal. By appearing before me and arguing the matter, the plaintiff has waived any right to file this encl 69. He is estopped by conduct. His unequivocal submission in response to the defendant's appeal which I heard on 14 August 1997 and the subsequent application to strike out the further
I and better particulars that was filed pursuant to my order, clearly shows the acrimony insidiously pervading this case.

I therefore was of the opinion that because of the close relationship between the respective protagonists, every opportunity must be given to

either party to ventilate fully their grievances; for where else can either party go for justice than to the footsteps of this court. In the exercise of my discretion, I extended time and dismissed the plaintiff's application. In the circumstances, encl 76 would have been automatically struck out. In further exercising my discretion, I allowed the plaintiff his costs in respect of all three applications. On further reflection, I ought to have ordered costs in the cause.

Order accordingly.

Reported by Lew Chee Seong